



HB 0091B

2003

1 A bill to be entitled

2 An act relating to workers' compensation; amending s.  
3 440.15, F.S.; providing additional limitations on  
4 compensation for permanent total disability; providing for  
5 construction of the act; providing an effective date.  
6

7 Be It Enacted by the Legislature of the State of Florida:  
8

9 Section 1. Paragraphs (a), (b), and (e) of subsection (1)  
10 of section 440.15, Florida Statutes, are amended to read:

11 440.15 Compensation for disability.--Compensation for  
12 disability shall be paid to the employee, subject to the limits  
13 provided in s. 440.12(2), as follows:

14 (1) PERMANENT TOTAL DISABILITY.--

15 (a) In case of total disability adjudged to be permanent,  
16  $66\frac{2}{3}$  percent of the average weekly wages shall be paid to the  
17 employee during the continuance of such total disability. No  
18 compensation shall be payable under this section if the employee  
19 is engaged in, or is physically capable of engaging in, at least  
20 uninterruptedly sedentary employment.

21 (b) In the following cases, an injured employee is  
22 presumed to be permanently and totally disabled unless the  
23 employer or carrier establishes that the employee is physically  
24 capable of engaging in at least uninterruptedly sedentary  
25 employment within a 50-mile radius of the employee's residence:

26 1. Spinal cord injury involving severe paralysis of an  
27 arm, a leg, or the trunk;

28 2. Amputation of an arm, a hand, a foot, or a leg  
29 involving the effective loss of use of that appendage;

30 3. Severe brain or closed-head injury as evidenced by:



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- 31        a. Severe sensory or motor disturbances;  
32        b. Severe communication disturbances;  
33        c. Severe complex integrated disturbances of cerebral  
34 function;  
35        d. Severe episodic neurological disorders; or  
36        e. Other severe brain and closed-head injury conditions at  
37 least as severe in nature as any condition provided in sub-  
38 subparagraphs a.-d.;  
39        4. Second-degree or third-degree burns of 25 percent more  
40 of the total body surface or third-degree burns of 5 percent or  
41 more to the face and hands; or  
42        5. Total or industrial blindness.

43  
44 In all other cases, in order to obtain permanent total  
45 disability benefits, the employee must establish that he or she  
46 is not able to engage in at least uninterruptedly sedentary  
47 employment, within a 50-mile radius of the employee's residence,  
48 due to his or her physical limitation. Entitlement to such  
49 benefits shall cease when the employee reaches age 75, unless  
50 the employee is not eligible for social security benefits under  
51 42 U.S.C. s. 402 or s. 423 because the employee's compensable  
52 injury has prevented the employee from working sufficient  
53 quarters to be eligible for such benefits, notwithstanding any  
54 age limits. If the accident occurred on or after the employee  
55 reaches age 70, benefits shall be payable during the continuance  
56 of permanent total disability, not to exceed 5 years following  
57 the determination of ~~Only a catastrophic injury as defined in s.~~  
58 ~~440.02 shall, in the absence of conclusive proof of a~~  
59 ~~substantial earning capacity, constitute permanent total~~  
60 ~~disability. Only claimants with catastrophic injuries or~~



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61 claimants who are incapable of engaging in employment, as  
62 described in this paragraph, are eligible for permanent total  
63 benefits. In no other case may permanent total disability be  
64 awarded.

65 (e)1. The employer's or carrier's right to conduct  
66 vocational evaluations or testing by the employer's or carrier's  
67 chosen rehabilitation advisor or provider ~~pursuant to s. 440.491~~  
68 continues even after the employee has been accepted or  
69 adjudicated as entitled to compensation under this chapter and  
70 costs for such evaluations and testing shall be borne by the  
71 employer or carrier, respectively. This right includes, but is  
72 not limited to, instances in which such evaluations or tests are  
73 recommended by a treating physician or independent medical-  
74 examination physician, instances warranted by a change in the  
75 employee's medical condition, or instances in which the employee  
76 appears to be making appropriate progress in recuperation. This  
77 right may not be exercised more than once every calendar year.

78 2. The carrier must confirm the scheduling of the  
79 vocational evaluation or testing in writing, and must notify the  
80 employee and the employee's counsel, if any, at least 7 days  
81 before the date on which vocational evaluation or testing is  
82 scheduled to occur.

83 3. Pursuant to an order of the judge of compensation  
84 claims, the employer or carrier may withhold payment of benefits  
85 for permanent total disability or supplements for any period  
86 during which the employee willfully fails or refuses to appear  
87 without good cause for the scheduled vocational evaluation or  
88 testing.

89 Section 2. The amendments to paragraphs (a), (b), and (e)  
90 of subsection (1) of section 440.15, Florida Statutes, contained



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91 in this act shall prevail over any conflicting amendments to  
92 that section contained in Senate Bill 50-A, 2003 Special Session

93 A.

94       Section 3. This act shall take effect upon becoming a law.